



SIGNING YOUR WILL

You must sign (“execute”) your Will according to the strict requirements established by the BC *Wills, Estates and Succession Act*. This is the correct procedure:

- Before signing, read through the Will and ensure that you understand and approve what it says, and that there are no changes needed. Notify us immediately if changes are required.
- If *any* minor amendments are to be made to the Will (such as the correction of a spelling error), the amendment must be made *before* you sign the Will. When you are signing your Will, you and both witnesses (in the presence of each other) must initial next to the change or in the column to the right of the line in which the amendment appears to denote change (use tick marks ✓ on both sides of change, similar to making a change on a cheque). While a minor change can be made and initialed by you and your witnesses at the time of signing, we prefer to make the changes on the computer and print out a fresh copy of the Will.
- You and two witnesses must be present in the same room all at the same time, and you must watch each other sign the Will as described below. [For remote witnessing during the COVID-19 pandemic, see below.]
- Neither witness should be an individual, or spouse of an individual named in this Will as Executor or beneficiary [NOTE - if such a person did witness the Will, the Will itself would still be valid, but the appointment of the Executor or gift to relevant witness or their spouse would be invalid and would fail]. [For situations where no other witnesses are available during the COVID-19 pandemic, see below].
- Witnesses must be at least 19 years old.
- Write the date in the space provided in the last paragraph of the Will (on the last page).
- Write your initials in the right-hand margin of the same line where you wrote the date.
- Sign your normal signature on the signature line at the end of your Will.

- Write your initials in the bottom right corner of each page other than the one you've just dated, initialed and signed.
- Each witness must sign the last page of the will on the appropriate line, then print their name, address and occupation (or retired or unemployed) on the appropriate lines.
- Each witness must then write their initials next to your initials at the bottom right of each page and next to your initials on the final page.
- Only execute the original document. Make photocopies, and then staple the pages together in each together.
- You should give a photocopy to your Executor. You should stamp or write "COPY" at the top of each page. [Note - do not remove the staples when making photocopies - the Will must be kept in the exact condition it was in when signed and witnessed].
- While you can change always change your mind later and change your Will, you cannot just change the Will document itself once it is executed. If you wish to make changes or update the Will, you could create an additional legal document, signed and witnessed in the same manner as the Will, (known as a 'Codicil') that is then attached to the original Will. However, it is best practice to simply make a new Will rather than make a Codicil as an addition to the Will. Contact us if you wish to make a new Will and we can discuss options appropriate for your needs.

STORING YOUR WILL

Once you have correctly executed the Will, keep the original safe and accessible by your Executor. Some suggestions:

- Ideal locations are a safety-deposit box at a bank, a safe in your own home, or a metal filing cabinet.
- If you keep it in a safety-deposit box, you should have your Executor co-sign for the box. This will allow them to easily access the box when necessary.
- If you keep it in a locked location, provide your Executor with a key or the combination.
- Inform your Executor of the location of the Will and any other important documents.

HELPING YOUR EXECUTOR

- We have provided a link below to a document called “Being an Executor” from the People’s Law School (a BC non-profit that provides the public with legal information). You may want to share this with your Executor, so they are familiar with the process.
- You may want to create a “digital inventory” with important usernames/passwords for online social media, photo albums, cloud storage, and other websites.
- An actual inventory of your possessions, and your finances (bank account #'s, locations, RRSP info, etc.) would greatly help your executor once you’re gone and they have to take stock of your assets.

REGISTER A WILLS NOTICE

Once the will is in its storage location, you should register it with the Vital Statistics Agency. This is called a “Wills Notice” and can be done easily online. The fee is \$17. The Agency will not have a copy of the will but rather a record of its existence and location. Your Executor will have to search the Wills Registry as a part of their job in the probate process, regardless of whether you register it, but registration may make the process faster. You will have to re-register your Will if you move it to a different location or make a new Will.

LINKS:

- Wills Registry: <https://www2.gov.bc.ca/gov/content/life-events/death/wills-registry>
- Being an Executor: <https://www.peopleslawschool.ca/publications/being-executor>
- Executor Guide - the law firm of Heritage Trust has a comprehensive wiki for Executors: what to do as the adult’s death approaches, dealing with grief and loss, a estate administration flowchart, checklists, etc. Here is the link: https://wiki.heritagetrustcompany.ca/index.php?title=Executor_Guide_for_British_Columbia

WILLS IN THE TIME OF COVID 19

Signing and witnessing a Will could be a challenge when practicing physical distancing and isolation. Wills might have to be signed with everyone masked and 6 feet apart and sliding the documents around a big table to each other (and all washing hands afterward). Witnessing through a window or glass door might also qualify as witnessing 'in the presence of' the will-maker, signing on the other side of the window or door, and then passing the document through for the others to sign. There is no maximum distance specified in the law for being "in the presence of" the other signers.

Proper Witnesses Not Available or No Witnesses

For adults unable to get out for a signing, this can be a problem if the only ones available around the house to act as witnesses are also the named executor, alternate, and/or beneficiaries or spouses of these people. In these circumstances the will-maker might consider going ahead and using them as witnesses. But note that an executor or their spouse should not be a witness if there is a 'charging clause' permitting an executor to charge professional fees on top of any remuneration to which they are entitled. If there is no one available to sign as witnesses, the will-maker might sign the Will with no witnesses. WESA has provisions for curing deficiencies in and rectifying Wills. WESA section 58 allows the court to accept any "record, document or writing or marking on a will or document that represents...the testamentary intentions of a deceased person." So even with no witnesses, a printed-out will signed only by the will-maker could be seen as representing their final intentions.

Holograph Will?

A will-maker could also make a will completely in their own handwriting and sign it without witnesses. This is known as a 'holograph will' and it might be approved under section 58. After COVID-19 distancing restrictions have passed or been eased, a new copy of the Will could be printed out and signed and witnessed with the proper procedure and proper witnesses.

Skype or Zoom Witnessing: Remote Witness is Lawyer or Notary

One or both Witnesses Electronically Present

During the State of Emergency in BC, there is a special Emergency Order regarding witnessing a Last Will remotely (will-maker and two witnesses can all be in different locations but "electronically present" with each other, or 2 physically together and the other "electronically present"). "Electronically present" is defined in the Order as being able through electronic means to "communicate simultaneously to an extent that is similar

to communication that would occur if all the individuals were physically present in the same location (e.g. - videoconferencing like Zoom, Microsoft Teams, Skype, etc.).” Note that with this remote witnessing, at least one of the two witnesses must be a lawyer or a notary public in good standing with the Society of Notaries Public of British Columbia. When one of the witnesses is a lawyer or a notary public in good standing, having a second witness is optional.

Will signed in ‘counterpart’

A Last Will may be signed and witnessed by signing complete and identical copies of the Last Will (called signing in counterpart). The two copies of the Last Will are considered identical by the law even if there are non-substantive differences *in the format* (but not the substance) between the copies. As noted, one of the remote witnesses in this situation must be a lawyer or notary public. A Last Will made in accordance with this order must include a statement that it was signed and witnessed in accordance with this Order. The two counterpart copies of the Last Will should then be physically joined together into one document.

Others as Remote Witnesses

You may not be able to, or be unable to afford to, have a lawyer or notary witness your EPOA signing remotely. While not provided for in the Order under the State of Emergency, another possibility would be a will-signing over Skype or Zoom with others acting as remote witnesses. The will-maker and the two witnesses would each have a copy of the Last Will in front of them to sign in counterpart. While the law does not allow the witnessing of signatures for Last Wills by teleconference and signing in counterpart except when a lawyer or notary is one of the witnesses, again it may be possible to have this deficiency cured under section 58 of WESA.

Special Attestation Clause

The attestation clause above the witnesses’ signatures would have to set out the special circumstances of the remote witnessing and signing in counterpart. Here is an example of that attestation clause:

Letter from Will-Maker

For any of these special circumstances (no witnesses, improper witnesses, remote witnesses (but no lawyer or notary) signing in counterpart), there would then be a letter like the following for the will-maker to sign and include with their will, in support of any subsequent court application for curing deficiencies:

<NAME>
<ADDRESS>

<date>

TO: Whom it may concern

RE: The Execution of My Will

My will dated <date> (my "Will") was signed by me during a global coronavirus pandemic. In response to extraordinary measures recommended to be taken during this time, and out of an abundance of caution for the health of myself and those around me, I have chosen to execute my Will by <describe procedure of execution>. I am advised by my Lawyer and acknowledge that my Will has not been executed in accordance with the formal requirements as set out in section 37 of the *Wills, Estates and Succession Act* (British Columbia) (the "Act").

I am further advised by my lawyer that section 58 of the Act permits the Supreme Court of British Columbia to make an order that my Will is fully effective, if it is determined that my Will represents my final testamentary intentions. Accordingly, I hereby confirm that my Will, despite not being validly executed in accordance with the Act, records my deliberate, fixed and final expression of my intention as to the disposal of my property on my death.

Sincerely,

<Name>

After COVID-19

After COVID-19 distancing restrictions have passed or been eased, a new copy of the Will should be printed out and signed with the proper witnessing procedures. If you are also signing other planning documents such as a **Nomination of Committee**, **Enduring Power of Attorney**, and/or **Representation Agreement**, those documents must be executed in the same way as a Will. Please follow all of the above procedures.

This handout includes 'work-arounds' suggested by the law firms of Clark Wilson LLP; Heritage Law; and, DLA Piper.